

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 08-8394**

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BENJAMIN HILLIARD,

Petitioner - Appellant,

v.

THEODIS BECK,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:07-hc-02181-D)

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Submitted: April 16, 2009

Decided: April 24, 2009

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Before WILKINSON, NIEMEYER, and SHEDD, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Benjamin Hilliard, Appellant Pro Se. Clarence Joe DelForge, III, Assistant Attorney General, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Benjamin Hilliard seeks to appeal the district court's orders denying relief on his 28 U.S.C. § 2254 (2006) petition, and denying his motion for reconsideration, which the district court construed pursuant to Fed. R. Civ. P. 60(b).<sup>\*</sup> The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. See 28 U.S.C. § 2253(c)(1) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. See Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Hilliard has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss

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<sup>\*</sup> Hilliard claims he placed his motion in the institutional mail within ten days. See Houston v. Lack, 487 U.S. 266 (1988). Even if the motion had been construed pursuant to Rule 59(e), we find no abuse of the district court's discretion in its denial of the motion. See Temkin v. Frederick County Comm'rs, 945 F.2d 716, 724 (4th Cir. 1991).

the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED